

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action No. 06-00074-CR-W-DW

v.

MICHAEL DALE and
DYSHAWN L. JOHNSON,

Defendant.

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

PENDING CHARGES: On February 28, 2006, the Grand Jury returned a four count indictment against defendants Michael L. Dale, Dyshawn L. Johnson and Bryant M. Burton¹. Count One of the indictment charges that between January 1, 2002, and August 31, 2004, all defendants conspired with each other and others to distribute more than five kilograms of cocaine and more than fifty grams of cocaine base (“crack”). Counts Two and Three charge that on December 20, 2002, defendant Dale and Johnson, aiding and abetting each other or others, used a firearm during and in relation to a drug-trafficking crime, and in so doing, murdered Anthony Rios and Olivia Raya.

The following matters were discussed and action taken during the pretrial conference:

TRIAL COUNSEL:

Government: Gregg Coonrod and Kathleen Mahoney

Case Agents: Special Agent Robert Plant of the FBI and Detective James Svoboda of the
Kansas City, Missouri Police Department

Defense: Brian Gaddy for defendant Dale

Larry Handfield and Rodney Holmes for defendant Johnson

OUTSTANDING MOTIONS:

The undersigned has prepared a Report and Recommendation with respect to Defendant’s Dale Motion to Suppress Statements (doc #111). The District Court’s ruling on this motion is pending.

Government’s Motion In Limine To Exclude Specific Bad Acts of Victims (doc #156) Defense counsel stated this motion is presently uncontested. If the trial testimony changes counsels’ opinion

¹Bryant Burton entered a change of plea on October 19, 2007

about the admissibility of any evidence covered by the motion, counsel stated they would approach the Court outside the hearing of the jury before offering any such evidence.

Defendant Dale's Motion In Limine To Preclude Evidence Referring to Purported Gang Membership Affiliations (doc #164)

Defendant Dale's Motion In Limine To Preclude Evidence Involving Gruesome and Graphic Photographs of Victims (doc# 165)

Defendant Dale's Motion For Leave Of Court To File Motion For Severance Of Parties Out Of Time (doc #177). The Court granted the motion for leave to file out of time. The government, although opposed to the Court granting the motion for leave to file out of time, stated they would file an opposition by Friday, November 16, 2007.

TRIAL WITNESSES:

Government: 35-40 witnesses with stipulations; 45-50 witnesses without stipulations
Defendants: Defendant Dale no more than 5 witnesses, the defendant may testify
Defendant Johnson 5-7 witnesses, the defendant may testify

TRIAL EXHIBITS

Government: 230-250 exhibits
Defendant: 10-15 exhibits for defendant Dale
No exhibits beyond those on the government's exhibit list for defendant Johnson

DEFENSES: General Denial

POSSIBLE DISPOSITION:

(X) Definitely for trial; () Possibly for trial; () Likely a plea will be worked out

TRIAL TIME: 8-9 days

Government's case including jury selection: 7 days
Defense case: 1-2 days for both defendants

STIPULATIONS: The government has proposed 8 stipulations. Counsel for the defendants are reviewing those and will advise the government of those stipulations to which they can agree.

UNUSUAL QUESTIONS OF LAW: Issues may arise at trial concerning the admissibility of co-conspirator statements. Because of Rule 404(b) evidence to be offered only against defendant Johnson, defendant Dale has filed a motion to sever.

FILING DEADLINES:

Witness and Exhibit List

Government: Friday before the pretrial conference

Defense: Friday before the pretrial conference

Counsel are requested to list witnesses in alphabetical order on their witness list.

Exhibit Index, Voir Dire, Jury Instructions: Noon, Wednesday November 21, 2007

Please Note: Jury instructions must comply with Local Rule 51.1

TRIAL SETTING: Criminal jury trial docket commencing November 26, 2007

IT IS SO ORDERED.

_____/s/_____
SARAH W. HAYS
United States Magistrate Judge